

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**SHANNON SPEARS**

**PETITIONER**

**V.**

**NO: 4:20CV00266 DPM/PSH**

**WHITE COUNTY DETENTION CENTER**

**RESPONDENT**

**PROPOSED FINDINGS AND RECOMMENDATION**

**INSTRUCTIONS**

The following Proposed Recommendation has been sent to Chief United States District Judge D. P. Marshall Jr. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

**DISPOSITION**

Petitioner Shannon Spears (“Spears”), while an inmate in state custody, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on March 12, 2020. Docket entry no. 1. Spears did not file an application for permission to proceed *in forma pauperis*. As a result, the Court directed Spears to either submit the \$5 filing

fee or a properly completed application to proceed *in forma pauperis*. Spears was instructed to comply with the Court's direction by May 7, 2020. Docket entry no. 3. Spears was also notified of his responsibility to comply with Local Rule 5.5, requiring him to prosecute his case diligently and respond to communication from the Court.

Spears has not submitted the filing fee or an application to proceed *in forma pauperis* or otherwise responded to the Court's April 7 Order.<sup>1</sup> Under these circumstances, the Court concludes that Spears' petition should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2) and failure to respond to the Court's order. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (district courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

The Court therefore recommends that Spears' petition for writ of habeas corpus be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2) and failure to respond to the Court's order.

Pursuant to 28 U.S.C. § 2253 and Rule 11 of the Rules Governing Section 2554 Cases in the United States District Court, the Court must determine whether to issue a certificate of appealability in the final order. In § 2254 cases, a certificate of

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<sup>1</sup>Spears has also failed to promptly notify the Court of his change of address, as required by Rule 5.5(c)(2). Mail addressed to Spears has been returned as undeliverable. Docket entry no. 4.

appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). The Court finds no issue on which petitioner has made a substantial showing of a denial of a constitutional right. Thus, the Court recommends that the certificate of appealability be denied.

IT IS SO ORDERED this 11th day of May, 2020.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

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UNITED STATES MAGISTRATE JUDGE